



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

EX PARTE OR LATE FILED

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May 14, 1993

MAY 17 1993

FCC MAIL BRANCH

Secretary of the Commission
Federal Communications Commission
Washington, D. C. 20554

Re: In the Matter of Policies and Rules
Implementing the Telephone Disclosure
and Dispute Resolution Act
CC Docket No. 93-22, ~~RM-7900~~ 7990

Dear Secretary:

Enclosed please find the motion of the Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General for leave to submit reply comments and Reply Comments to be filed in the above captioned matter.

Thank you for your cooperation in this regard.

Sincerely yours,

David J. Gilles
Assistant Attorney General

EX PARTE OR LATE FILED
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of: :
: CC Docket No. 93-22
: RM - 7990
Policies and Rules Implementing :
the Telephone Disclosure and :
Dispute Resolution Act :
:

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MAY 17 1993

MOTION OF THE TELECOMMUNICATION
SUBCOMMITTEE OF THE
CONSUMER PROTECTION COMMITTEE,
NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
FOR LEAVE TO SUBMIT REPLY COMMENTS

FCC MAIL BRANCH

The Telecommunications Subcommittee of the Consumer Protection Committee, National Association of Attorneys General requests leave to file reply comments after the deadline in the above captioned matter on the following grounds:

1. The Telecommunication Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General ("subcommittee/states") is comprised of the attorneys general of the states of Arizona, California, Connecticut, Florida, Iowa, Maine, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Vermont, West Virginia and Wisconsin.

2. The subcommittee has participated in this proceeding and has been involved in representing subcommittee concerns regarding pay-per-call services. The subcommittee, due to a variety of circumstances, experienced difficulty in preparing reply comments to submit in a timely manner.

3. The subcommittee's reply comments are filed herewith. The subcommittee's reply comments are substantively identical to

reply comments filed by the Commonwealth of Pennsylvania within the time period designated in this matter. The purpose of this motion is to make the record clear that reply comments submitted on behalf of the Commonwealth of Pennsylvania are supported and endorsed by the subcommittee. The subcommittee believes that no prejudice will result, inasmuch as substantively identical reply comments were timely filed and no attempt has been made to address issues raised in other reply comments.

Dated: May 14, 1993

Respectfully submitted,

JAMES E. DOYLE
Attorney General
State of Wisconsin
Telecommunications
Subcommittee
Chairperson

ERNEST D. PREATE, JR.
Attorney General
Commonwealth of Pennsylvania
Telecommunications
Subcommittee
Vice-Chairperson

By: 

DAVID J. GILLES
Assistant Attorney General

By: 

DANIEL CLEARFIELD
Executive Chief Deputy
Attorney General

EX PARTE OR LATE FILED

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

CC Docket No. 93-22

**Policies and Rules Implementing
the Telephone Disclosure and
Dispute Resolution Act**

RM-7990

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MAY 17 1993

FCC MAIL BRANCH

**REPLY COMMENTS OF THE
TELECOMMUNICATIONS SUBCOMMITTEE
OF THE
CONSUMER PROTECTION COMMITTEE
OF THE
NATIONAL ASSOCIATION OF ATTORNEYS GENERAL**

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I. Introduction.

MAY 17 1993

The Telecommunications Subcommittee of the National Association of Attorneys General, Consumer Protection Committee
FCC MAIL BRANCH
("the States") hereby submits these Reply Comments in response to the Comments submitted to the Federal Communications Commission regarding its Proposed Rulemaking to implement the Telephone Disclosure and Dispute Resolution Act (TDDRA).

II. Billing Collection - Carriers Should Be Required To Make Adjustments To Consumer Bills When Consumers Complain About Deceptive Or Unauthorized 900 Number Calls.

In their Comments, the Telecommunications Subcommittee Consumer Protection Committee, National Association of Attorneys General, (hereinafter "the States" or "NAAG") urged the FCC to establish in its rules that carriers were required to provide refunds or credits to customers when they make claims that the underlying 900 number service was deceptive or misleading or where calls were unauthorized. NAAG Comments at 11. This comment was in response to the FCC's proposed Rule §64.1511, which suggested that a carrier be required to "forgive pay-per-call charges or issue refunds" when, on its own motion or upon complaint, a carrier "determines" that a pay-per-call service was offered "in violation of federal law or the regulations that are either set forth in the this sub-part or prescribed by the Federal Trade Commission pursuant to Titles 2 or 3 of the TDDRA."

¹The subcommittee members include the Attorneys General of Arizona, California, Connecticut, Florida, Iowa, Maine, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Vermont, West Virginia and Wisconsin.

The States urged a broader standard on which credits or refunds could be authorized to include claims that the service was deceptive or misleading or otherwise in violation of state law, or where the call was unauthorized. The States urged this modification because of its view that present practice provides credits generally when customers allege that they did not receive what they were promised or were otherwise deceived (thereby constituting a violation of state deceptive practices laws), where the service did not comply with the individual state rules and statutes regarding 900 number services, or where the service was unauthorized -- e.g., a minor child making a call without permission or knowledge of the parent. NAAG Comments at 11-12.

A few parties have suggested that carrier "refunds" should only be provided when a 900 service has been "adjudicated" as being in violation of federal law. See NAIS Comments at 17; MCI Comments at 8. Such a restrictive ruling would be disastrous for telephone consumers and could pose a real threat to fair and reasonable billing and collection procedures.

The States have set forth in detail their proposal for a billing dispute process in their comments to the FTC proposed rules regarding billing disputes (See NAAG FTC Comments at 18-27). The FCC should adopt this process. It is important to recognize that the procedure that the FCC should endorse reflects the present practice of the carriers and local telephone companies of providing credits or refunds to consumers upon the assertion that a 900 number service is deceptive or misleading or

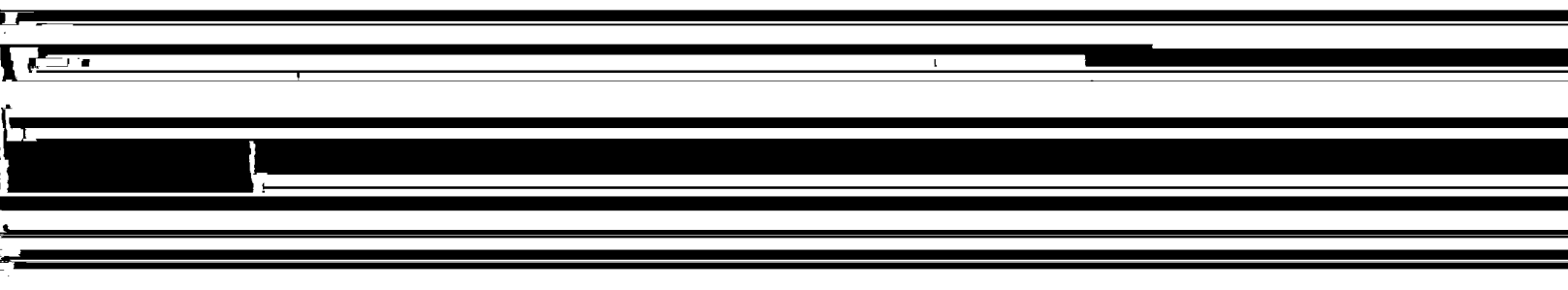
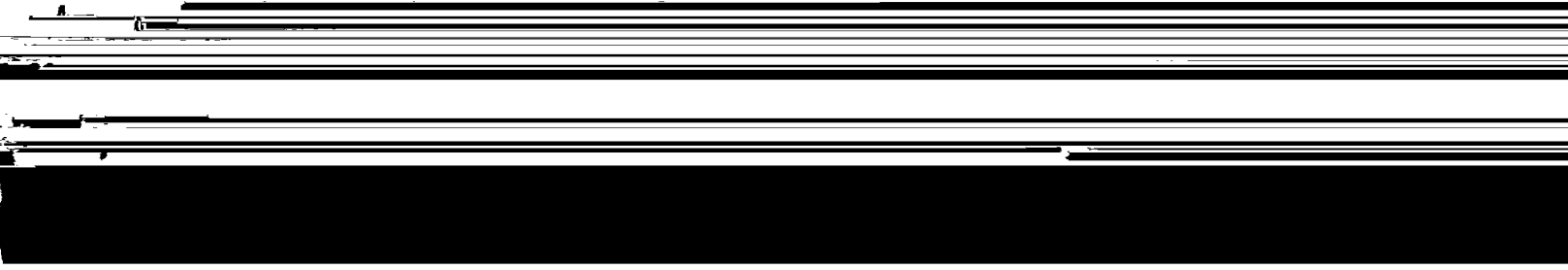
that the call was unauthorized. The NAAG FTC comments demonstrate that a majority of telephone consumers continue to believe that the failure to pay 900 number service charges could result in the termination or suspension of their telephone service, or simply don't know whether it could or not. NAAG FTC Comments at 23-24 and ftns. 13 and 15. Almost three quarters of the consumers surveyed in one state survey showed this fundamental misunderstanding or lack of understanding. Id. Therefore, if telephone companies are required to leave 900 number charges on a subscriber's bill, notwithstanding a complaint that the service was deceptive or misleading or that a call was unauthorized, there exists a substantial probability that many consumers will simply pay those charges to avoid any perceived threat of interruption of telephone service, even when the consumer sincerely believe that the charges are inappropriate.

This result is particularly unfair in light of the fact that other public opinion survey data in the record indicates that as many as one half of all consumers continue to misunderstand 900 number services and cannot accurately identify them as calls for which an extra charge will be assessed. See NAAG FTC Comments at 10, ftn. 5.

Accordingly, it is vital that the FCC clarify its rule to indicate that carriers can continue to provide credits to customers who complain about particular charges when the complaints fall into the general category of alleging that the

service did not provide what was promised, was otherwise deceptive or misleading or when a bona fide claim is raised that the call was unauthorized.

Not only is this the present industry practice, but several industry commentators support this view. For example, the Information Industry Association (IIA) stated that "where customers have been mislead by false advertising, victimized by poor transmission quality or charged for unauthorized calls, the charges should be forgiven." IIA Comments at 17 (emphasis supplied). Bell Atlantic also lent support to this position: "a consumer who complains about a pay-per-call service that is offered in violation of the law should not have to pay for that service and the provider of such a service should be required to refund the customers money." Bell Atlantic Comments at 7. In addition, commentators from the industry and regulatory



of the local exchange companies could be a useful approach to dealing with claims of unauthorized calls.

It may be that those commentators who proposed that "refunds" should only be granted to consumers if a pay-per-call service has actually been adjudicated as in violation of federal law may have been reading the FCC Rule to require massive, across-the-board refunds of charges to all consumers when a service is deemed "in violation of law." The States' call for a more liberal credit policy is grounded on the assumption that credits will be requested on an individual basis by consumers for a particular service. Such a credit would mean, pursuant to the FTC Proposed Rules, that an individual would no longer have a 900 number pay-per-call charge showing on the carrier portion of their local telephone bill. Without a finding of a violation of law the information service provider would still have the option of pursuing collection through some kind of second collection effort.

If the rule contemplates across-the-board refunds initiated by carriers to all consumers who made a call to a particular 900 number, the FCC should articulate the precise basis on which a carrier would be required to come forward with such refunds, but it should also make clear either that the standard for granting individual credits or refunds is different, or that the rule does apply to such individual case-by-case adjustments.

III. Collect Pay-Per-Calls Should Be Banned.

Several commentators have protested the Commission's suggestion that all types of collect pay-per-calls should be effectively banned by prohibiting carriers from providing billing collection or transmission for such calls. See, e.g., Comments of Amalgamated Megacorp at 7-9. They claim that these calls provide some type of useful service. Nothing could be further from the truth. Collect pay-per-calls are designed for only one purpose -- to circumvent the present consumer protections that exist for 900 number calls, including the ability of consumers to block such calls. These schemes also attempts to take advantage of the natural confusion that is created by customers who do not understand the nature of the "collect" call they receive the disclosures and may assume that they are dealing with a traditional collect call. In fact, one service provider provided a detailed narrative of the ways in which collect pay-per-calls are abusive to consumers and characterized these as "advantages" to the IPs. See Comments of Summit Telecommunications at 5.²

There is no practical or legal reason why pay-per-call services should not be required to be provided using 900 numbers or some other useful exchange. This would help consumers know that special charges are going to be exacted as a result of

²Ironically, Summit's Comments then go on to describe a service which it claims to be superior to collect pay-per-calls but which is essentially the same as the collect pay-per-call services that it criticizes. Some state attorneys general have received complaints and are investigating pay-per-call schemes that use precisely the approach reflected in Summit's Comments.

making the call and eliminate these potentially abusive "collect" pay-per-call services.

With respect to the concern raised by many carriers that they are unable to spot a pay-per-call collect calls, it is submitted that it would be sufficient to require carriers to terminate billing and collection or transmission for such calls when, after investigation, they have identified the calls as a pay-per-call service. This can be done, as it is today, by investigating complaints from individual consumers or by state or federal law enforcement agencies.

IV. Conclusion

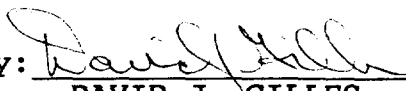
The states respectfully request that the FCC promulgate rules in the manner described herein.


Dated: May 14, 1993

Respectfully submitted,

JAMES E. DOYLE
Attorney General
State of Wisconsin
Telecommunications
Subcommittee
Chairperson

ERNEST D. PREATE, JR.
Attorney General
Commonwealth of Pennsylvania
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